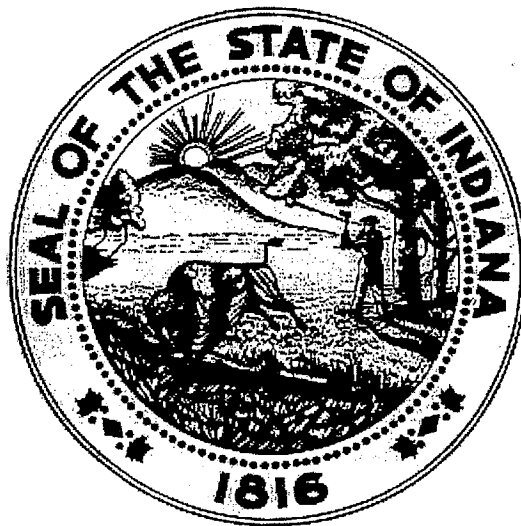


CHECK DECEPTION PROGRAM.

BOONE COUNTY, INDIANA



OFFICE OF THE PROSECUTING ATTORNEY

20th JUDICIAL CIRCUIT

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Dear Business Owner:

With your cooperation, the Boone County Prosecutor's Office can help protect your business against bad checks. We understand that dishonored checks are a significant threat to your business. At no expense to you, your money can be collected and the people who write bad checks can be prosecuted.

However, in order for this program to operate successfully it is necessary for the offender to be properly identified. Your business is the front line in this regard. Therefore, please take the time to read over carefully the "Admission Standards" and "What You Need To Do" sections of this packet. The writer's identity is best established by using a driver's license. You should make sure that you record the check writer's license number, date of birth, social security number on the check itself. You should compare the signature on the check with the signature on the license. If you fail to record this identifying information, it will be difficult to prosecute the check writer. Enclosed is an updated packet and a new complaint form to begin using immediately.

This Office hopes you will take the time to fully incorporate the following material into your day-to-day check acceptance process. We are here to help. Please contact Cindy Walters, Director of the Check Deception Program, at (765) 482-6860 if you have any questions.

If you choose to participate in this program I ask that you clearly display the enclosed bad check warning sticker and/or signage in an attempt to discourage bad check writers and spread the word regarding this useful program.

With your cooperation, the Boone County Prosecutor's Office will help protect you and your business from bad check writers.

Very truly yours,

Todd J. Meyer
Prosecuting Attorney

Enclosure

Boone County Prosecutor's Office Program Admission Standards

1. A check will not be eligible for the Boone County Check Deception Program, if it is turned into our office more than 180 Days from the date that is written on the check.
2. A check will not be eligible for the Boone County Check Deception Program if at the time of the transaction, no photo ID or State issued ID card is recorded.
3. Any check received by the Boone County Check Deception Program that is over \$2,000.00 will be referred to the proper law enforcement agency.
4. Any postdated check will not be accepted into the Boone County Check Deception Program.
5. Any check that the identity of the check writer is unknown will not be accepted into the Boone County Check Deception Program.
6. Any check where there is no amount, date, or signature on the check, will not be accepted into the Boone County Check Deception Program.
7. Any check that has not been processed by a bank will not be accepted into the Boone County Check Deception Program.
8. Any check where the written amount and the numeric amount do not match will not be accepted into the Boone County Check Deception Program.
9. Any out-of-state check will not be accepted into the Boone County Check Deception Program.
10. Any check that was written and both parties knew at the time the check was written that there were insufficient funds, will not be accepted into the Boone County Check Deception Program.
11. Any check that has been previously turned over to a private collection agency will not be accepted into the Boone County Check Deception Program.

What you need to do

First, you will need to design a sensible process of accepting checks. You may want to base your acceptance process on the tips contained in this packet (see "tips").

Second, when you receive checks rejected by the bank and returned marked "insufficient funds" or "account closed" you should send a letter to the check writer notifying him of the rejection. This provides the check writer the opportunity to correct a possible mistake and pay the amount owed. This letter is often referred to as the "ten-day letter" and it informs the check writer that

unless the amount is paid within ten days the check will be forwarded to the Prosecutor's Office for criminal prosecution. Enclosed in the packet is an example of a ten-day letter that you can adapt for your purposes. The ten-day letter must be sent to the check writer by certified mail, return receipt requested.

Third, if the check writer fails to respond to the ten-day letter, you should:

- A. Complete a "Bad Check Referral Form."
- B. Attach to the referral form the following three documents:
 - (1) the dishonored check,
 - (2) the ten-day letter and
 - (3) the post office receipt for the ten-day letter
- C. Mail or bring the referral form and the above attachments to the Prosecutor's Office.
- D. If the check writer comes to your store and tries to pay the check after you have referred the matter to the Prosecutor's Office you must direct the check writer to the Prosecutor's Office in order to pay the amount owed. You should not accept payment.

What the Prosecutor will do

After receiving the referral form and the appropriate attachments (check, ten-day letter, and post office receipt), the Prosecutor will again send a letter to the check writer advising the writer that he has a specific amount of time to pay the check in full plus additional protest and service fees. In the letter, the Prosecutor will warn the check writer that he faces criminal prosecution on check deception charges if he fails to pay the amount owed.

If he does pay then you will be returned the full amount of the check plus an additional \$27.50 protest fee.

If he does not pay, criminal charges of check deception will be filed against the check writer. If criminal charges are filed, you and/or your employees may be called as witnesses to appear in court.

"TIPS" on Accepting Checks

The more information you collect the more likely the Prosecutor's Office will be able to successfully prosecute a bad check writer.

Ask for driver's license (or another form of picture identification)

Record identifying information on the check itself, including the check writer's name, address, date of birth, or social security number/driver's license number. The Prosecutor's Office will need either the check writer's date of birth or his social security number in order to pursue charges.

Compare the driver's license information with the information on the check. Be sure to compare the driver's license photo with the check writer.

Make sure the check is completely filled out. The check should be signed in your presence. Don't accept a Post Office Box for an address. Arrest warrants cannot be served on a Post Office Box.

Do not accept a check if the name on the check is not the same name as the person signing the check.

Company checks should have the writer's name visibly written on the check if not already typed on the check.

Beware of low check numbers, alterations, and erasures.

Do not accept two-party checks or counter checks. Do not hold a returned check longer than one hundred and eighty (180) days after the check was written or accept a postdated check. Do not accept partial payment on a check.

Indiana's Check Deception statute is found at Indiana Code § 35-43-5-5. A copy of this statute appears below:

(a) A person who knowingly or intentionally issues or delivers a check, a draft, or an order on a credit institution for the payment of or to acquire money or other property, knowing that it will not be paid or honored by the credit institution upon presentment in the usual course of business, commits check deception, a Class A misdemeanor. However, the offense is a Class D felony if the amount of the check, draft, or order is at least two thousand five hundred dollars (\$2,500) and the property acquired by the person was a motor vehicle.

(b) An unpaid and dishonored check, a draft, or an order that has the drawee's refusal to pay and reason printed, stamped, or written on or attached to it constitutes prima facie evidence:

- (1) that due presentment of it was made to the drawee for payment and dishonor thereof; and
- (2) that it properly was dishonored for the reason stated.

(c) The fact that a person issued or delivered a check, a draft, or an order, payment of which was refused by the drawee, constitutes prima facie evidence that the person knew that it would not be paid or honored. In addition, evidence that a person had insufficient funds in or no account with a drawee credit institution constitutes prima facie evidence that the person knew that the check, draft, or order would not be paid or honored.

(d) The following two (2) items constitute prima facie evidence of the identity of the maker of a check, draft, or order if at the time of its acceptance they are obtained and recorded, either on the check, draft, or order itself or on file, by the payee:

- (1) Name and residence, business, or mailing address of the maker.
- (2) Motor vehicle operator's license number, Social Security number, home telephone number, or place of employment of the maker.

(e) It is a defense under subsection (a) if a person who:

- (1) has an account with a credit institution but does not have sufficient funds in that account; and
- (2) issues or delivers a check, a draft, or an order for payment on that credit institution; pays the payee or holder the amount due, together with protest fees and any service fee or charge, which may not exceed the greater of twenty-seven dollars and fifty cents (\$27.50) or five percent (5%) (but not more than two hundred fifty dollars (\$250)) of the amount due, that may be charged by the payee or holder, within ten (10) days after the date of mailing by the payee or holder of notice to the person that the check, draft, or order has not been paid by the credit institution. Notice sent in the manner set forth in IC 26-2-7-3 constitutes notice to the person that the check, draft, or order has not been paid by the credit institution. The payee or holder of a check, draft, or order that has been dishonored incurs no civil or criminal liability for sending notice under this subsection.

(f) A person does not commit a crime under subsection (a) when:

- (1) the payee or holder knows that the person has insufficient funds to ensure payment or that the check, draft, or order is postdated; or
- (2) insufficiency of funds or credit results from an adjustment to the person's account by the credit institution without notice to the person.

SAMPLE TEN (10) DAY LETTER

Date

Check Maker's name

Address

Dear Check Maker:

You are hereby notified that your

check number _____
dated _____
and drawn on _____ (bank)
in the amount of \$ _____
made payable to _____

has been returned unpaid.

You should be advised that Indiana Code 35-43-5-5 provides that:

"A person who knowingly or intentionally issues or delivers a check for the payment of or to acquire money or other property, knowing that it will not be paid or honored by the credit institution upon presentment in the usual course of business, commits check deception, a Class A misdemeanor."

The maximum penalty for a Class A misdemeanor is one year in prison and a \$5,000 fine.

If you do not make arrangements to pay this check within the next ten (10) days this case will be sent to the Boone County Prosecuting Attorney's Office for criminal prosecution.

Sincerely,

Your name and address

BAD CHECK REFERRAL FORM

Please attach the original bad check(s) to this form and deliver the form with the check(s) to the Prosecutor's Office.

Check(s) payable to: _____

Check writer: _____

Your address: _____

Address: _____

Phone: _____

Check was received Yes No
in Boone County?

Date of birth: _____

Social Security: _____

By whom _____

Driver's license: _____

How was it received? Mail In Person

Phone: _____

Did they observe the
Check being signed? Yes No

Bank: _____

Notice has been sent
to the check writer? Yes No

Photo ID recorded Yes No

Describe your attempts to contact the check writer and your results (please attach any letters, telephone records etc.):

Check returned because: NSF Account Closed No account

Was the check post-dated? Yes No

Did you hold the check for an extended period of time? Yes No

Have any partial payments been made on the check? Yes No

Are you pursuing the matter with a collection agency? Yes No

Attached are _____ checks. (Please list date written, check number and amount below).

1.	Date _____	Check No. _____	Amount _____
2.	Date _____	Check No. _____	Amount _____
3.	Date _____	Check No. _____	Amount _____
4.	Date _____	Check No. _____	Amount _____
5.	Date _____	Check No. _____	Amount _____
6.	Date _____	Check No. _____	Amount _____

Print Name _____

Your signature: _____ Date: _____

W:\Office\Check Deception Program\Bad Checks\Bad Check Referral Form

REMINDER: Attach Checks Listed Above to this Form.